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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re Delbert and Myrna Barber, Debtors.	Case No. 13-63633-fra7 Adv. Proc. No.
DELBERT and **MYRNA BARBER**, Plaintiffs, v. **PACWEST FUNDING, INC.**, a domestic business corporation doing business under the assumed name **PRECISION CAPITAL**, and **JOHN DOES 1-50.** Defendants.	**COMPLAINT FOR WILLFUL VIOLATION OF THE AUTOMATIC STAY & CONVERSION** **11 USC § 362(k)** **11 USC § 542** **11 USC § 105** **28 USC § 2201(a)** **Oregon common law**

1.

INTRODUCTION

After receiving notice of the automatic stay, Defendants locked Plaintiffs out of their house, then seized and set Plaintiffs' belongings on fire in their front yard.

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2.

THE PARTIES

This is a civil action brought by Plaintiffs Delbert and Myrna Barber (the Barber Family) against Defendants Pacwest Funding, Inc. and John Does 1-50 (collectively referred to as "Creditor" or "Defendants") under 11 USC §§ 105, 362(k), and 542, 28 USC § 2201(a), and Oregon common law.

3.

JURISDICTION

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 USC §§ 1331, 1334, and 1367 because the Barber Family's automatic stay and turnover claims arise under Title 11 and form part of the same case and controversy as the Oregon common law claim.

4.

The United States Bankruptcy Court for the District of Oregon has jurisdiction of this action pursuant to 28 USC § 157 and LR 2100-1 because the Barber Family's claims arises in their bankruptcy case, number 13-63633-fra7, filed under Chapter 7 of Title 11 in this Honorable United States Bankruptcy Court for the District of Oregon in Eugene before the Honorable Chief Judge Frank R. Alley.

5.

NATURE OF CLAIMS

The automatic stay and turnover claims, and the Oregon common law claim, are core proceedings under 28 USC § 157(b)(2) because they concern the administration of the estate.

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6.

FACTUAL ALLEGATIONS

The Barber Family filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the District of Oregon in Eugene on September 18, 2013.

7.

Prior to seeking bankruptcy protection, the Barber Family owed a loan to Creditor secured by their house at 33606 Ophir Road, Gold Beach, Oregon 97444. *See* Exhibit 1.

8.

On or around September 20, 2013, Creditor received actual notice of the automatic stay in the Barber Family's bankruptcy case, including a notice generated from this Honorable Court.

9.

The court-generated notice warned Creditor that attempting to take actions against the Barber Family's property in violation of the automatic stay may result in penalties.

10.

As of the date of this Complaint, the Bankruptcy Court has never granted Creditor relief from the automatic stay in the Barber Family's bankruptcy case.

11.

The Barber Family does not yet know the true names and capacities of all the Defendants or their agents. The Barber Family intends to amend this Complaint to allege such names and capacities when known. Upon information and belief, each unknown or fictitiously named defendant or agent worked in concert with one another with knowledge of one another.

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12.

For the purposes of the allegations in this Complaint, Defendants and their agents worked in partnership in an ongoing venture with a share economic interest in seizing and destroying the Barber Family's property.

13.

Any wrongdoing committed by Defendants' agents against the Barber Family was in furtherance of their principal-agent relationship with Defendants and in furtherance of Defendants' economic interests.

14.

On or around October 21 and 22, 2013, Defendants locked the Barber Family out of their house.

15.

On or around October 21 and 22, 2013, Defendants seized and set the Barber Family's belongings on fire in their front yard. Various household items were seized or burned, including a puppet stage and cover, two speakers, and components and frames.

16.

At the time of the seizure and destruction, the Barber Family's house and belongings constituted property of the bankruptcy estate.

17.

Despite actual knowledge of the automatic stay in this bankruptcy case, Defendants seized and destroyed property of the estate.

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18.

On October 23, 2013, the Barber Family had to call the fire department to put out the burn pile Defendants left smoldering in their front yard.

19.

Defendants' burn pile had spread about five feet through pine needle duff and was moving toward a stump that would have provided more fuel.

20.

Mr. Barber eventually put the fire out himself with several gallons of water and a shovel.

21.

As a direct result of Defendants' conduct, the Barber Family suffers actual damages, including loss of use of their house and belongings, severe and ongoing stress, frustration and inconvenience, and expenses, including attorney fees and costs.

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22.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(VIOLATION OF THE AUTOMATIC STAY)

(11 USC § 362(k))

The Barber Family incorporates the above by reference.

23.

Creditor's conduct as alleged above willfully violates the automatic stay provisions of 11 USC § 362(a)(3), (4), and (5). The Barber Family is injured as a result of the willful violation, and so is entitled to injunctive and declaratory relief, an award of the expenses, including attorney fees and costs, incurred by the Barber Family to obtain the injunctive and declaratory relief sought, an award of actual damages, and an award of punitive damages.

24.

SECOND CLAIM FOR RELIEF

(TURNOVER OF PROPERTY OF THE ESTATE)

(11 USC § 542(a))

The Barber Family incorporates the above by reference.

25.

Pursuant to 11 USC § 542(a), the Barber Family respectfully requests an order requiring Defendants to (a) account for any property of the estate in their possession and (b) turn it over to the Barber Family.

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26.

THIRD CLAIM FOR RELIEF

(CONVERSION)

The Barber Family incorporates the above by reference.

27.

Defendants' seizure and destruction of the Barber Family's property was illegal.

28.

Defendants' exercise of dominion and control over the Barber Family's belongings so seriously interferes with the Barber Family's property rights that Defendants should be required to compensate the Barber Family for the full replacement value of the belongings.

29.

FOURTH CLAIM FOR RELIEF

(DECLARATORY RELIEF)

(11 USC § 105 and 28 USC § 2201(a))

The Barber Family incorporates the above by reference.

30.

The Barber Family respectfully requests this Honorable Court issue an order declaring the following:

(a) Creditor's seizure and destruction of the Barber Family's property willfully violated the automatic stay.

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WHEREFORE, the Barber Family requests order and judgment against Creditor as follows:

A. Injunctive relief as requested in ¶ 25 above;

B. Declaratory relief as requested in ¶ 30 above;

C. An award of the expenses, including attorney fees and costs, incurred by the Barber Family to obtain the injunctive and declaratory relief sought above;

D. An award of actual damages;

E. An award of punitive damages; and

F. For other equitable relief this Honorable Court may determine is fair and just.

Dated: October 24, 2013

/s/ Michael Fuller
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After recording return to:
Dean S. Kaufman, Esq.
142 West 8th Avenue
Eugene, Oregon 97401

CURRY COUNTY, OREGON
LAND
Cnt=1 Pgs=2 RECC
$10.00 $11.00 $15.75 $10.00
2013-01897
05/06/2013 03:38 PM
$46.75

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CERTIFIED TO BE A TRUE & COMPLETE COPY OF ORIGINAL

I Renee' Kolen, County Clerk, certify that the within document was received and duly recorded in the official records of Curry County.

Renee' Kolen - Curry County Clerk

STATE OF OREGON CURRY COUNTY CLERK

NOTICE OF DEFAULT, ELECTION TO SELL AND NOTICE OF SALE

GRANTOR: DELBERT L. BARBER and MYRNA J. NELSON-BARBER, as tenants by the entirety

GRANTOR ASSIGNED TITLE TO: DELBERT L. BARBER and MYRNA J. NELSON-BARBER, as Co-Trustees or their Successor Trustees under the BARBER FAMILY TRUST dated September 01, 2004.

TRUSTEE: DEAN S. KAUFMAN, Attorney at Law

ORIGINAL BENEFICIARY: FRONTIER INVESTMENT CO.

ASSIGNMENT OF BENEFICIAL INTEREST: The beneficial interest was assigned to FRONTIER L-704-G JOINT VENTURE, by Assignment Recorded August 9, 2004, Instrument No. 2004-5049, Official Records of Curry County Oregon.

DEED OF TRUST: As follows, including its recording in the Curry County Oregon Official Records:

Date of Trust Deed:	July 14, 2004
Date Recorded:	July 29, 2004
Recording Numbers:	2004-4829

DESCRIPTION OF REAL PROPERTY AND PERSONAL PROPERTY in Curry County, Oregon, covered by the Deed of Trust:

Beginning at a point which is North 3596.4 feet and East 461.7 feet of the Quarter Corner to Section 30 and Section 31, Township 35 South, Range 14 West, Willamette Meridian, Curry County, Oregon, said point also being on the Westerly boundary of U.S. Highway 101; thence Northerly on said Westerly boundary along the arc of a 2° 45′ 30″ curve to the left, the chord of which bears North 23° 45′ 30″ East 102.72 feet; thence North 67° 20′ West 350.0 feet to an iron rod witness corner and continuing North 67° 20′ West to the ordinary high water mark of the Pacific Ocean; thence Southerly along said high water line to a point that is North 63° 15′ 30″ West of the point of beginning; thence South 65° 15′ 30″ East to an iron rod witness corner and continuing South 65° 15′ 30″ East 340.0 feet to the Point of Beginning.

WHEN RECORDED RETURN TO:
FIRST AMERICAN TITLE COMPANY
P.O. BOX 1750
BROOKINGS, OR 97415
2075358-TD

NOTICE:
YOU ARE IN DANGER OF LOSING YOUR PROPERTY IF YOU DO NOT TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at:

Street address: **33606 Ophir Road**

City: Gold Beach State: Oregon ZIP: 97444

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called foreclosure.

The amount you would have had to pay as of **April 17, 2013** (date) to bring your mortgage loan current was $ **4,622.73**. The amount you must now pay to bring your loan current may have increased since that date.

By law, your lender has to provide you with details about the amount you owe, if you ask. You can call (888) 893-3954 (phone number) to find out the exact amount you must pay to bring your to mortgage loan current and to get other details about the amount you owe.

You may also get these details by sending a request by certified mail to:

Steve Shear, Precision Capital
4710 Village Plaza Loop, Suite 215
Eugene, Oregon 97401

THIS IS WHEN AND WHERE YOUR PROPERTY WILL BE SOLD IF YOU DO NOT TAKE ACTION:

Date and time: October 1, 2013 at 10:00 a.m.

Place: Front steps of the Curry County Courthouse, 29821 Ellensburg Ave., Gold Beach, Oregon 97444

THIS IS WHAT YOU CAN DO TO STOP THE SALE:

1. You can pay the amount past due or correct any other default, up to five days before the sale.
2. You can refinance or otherwise pay off the loan in full any time before the sale.
3. You can call Steve Shear (name) at 888-893-3954 (phone number) to find out if your lender is willing to give you more time or change the terms of your loan.
4. You can sell your home, provided the sale price is enough to pay what you owe.